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16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 IN RE APPLE & AT&TM ANTITRUST)
20 LITIGATION)

Master File No. C 07-05152 JW

21) **DECLARATION OF ALEXANDER H.**
22) **SCHMIDT IN SUPPORT OF**
23) **PLAINTIFFS' OPPOSITION TO**
24) **DEFENDANT APPLE, INC'S MOTION**
25) **TO DISMISS; IN PARTIAL OPPOSITION**
26) **TO APPLE'S REQUEST FOR JUDICIAL**
27) **NOTICE; AND IN SUPPORT OF**
28) **PLAINTIFFS' CROSS-REQUEST FOR**
JUDICIAL NOTICE

DATE: September 12, 2008

TIME: 1:00 P.m.

CRTRM: 8

JUDGE: Hon. James Ware

SCHMIDT DECL IN SUPPORT OF PLTFS' OPPOSITION TO DEFENDANT APPLE, INC.'S MOTION TO DISMISS AND PARTIAL OPPOSITION TO APPLE'S REQUEST FOR JUDICIAL NOTICE; AND IN SUPPORT OF PLAINTIFFS' CROSS-REQUEST FOR JUDICIAL NOTICE -- MASTER FILE NO. C 07-05152-JW

1 I, Alexander H. Schmidt, declare as follows:

2 1. I am an attorney duly licensed to practice in the states of New York and New
3 Jersey, and I have been admitted *pro hac vice* in this action. I am a member of the law firm Wolf
4 Haldenstein Adler Freeman & Herz LLP, Interim Lead Counsel for Plaintiffs in the above entitled
5 action. I have personal knowledge of the matters stated herein and, if called upon, I could and
6 would competently testify thereto.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of a label that was attached
8 to the bottom of the box containing the iPhone purchased by Plaintiff Herbert Kliegerman, which
9 Apple, Inc. ("Apple") has admitted was identical to labels affixed to the boxes of the other
10 Plaintiffs. *See* Defendant Apple's Request for Judicial Notice ("RJN") at p. 8, ¶1. Exhibit 1 is a
11 copy of the label reproduced in the actual size it appeared on the iPhone box bottoms, unlike the
12 copy of the labels that appear at RJN Exhibits A and B, which are by best estimation 70-75%
13 larger than actual size.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed this 6th day of August, 2008, at New York, New York.

16
17 /s/ Alexander H. Schmidt
18 ALEXANDER H. SCHMIDT
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**PLAINTIFFS' CROSS-REQUEST FOR JUDICIAL NOTICE
AND PARTIAL OPPOSITION TO APPLE'S REQUEST FOR JUDICIAL NOTICE**

Plaintiffs, in support of their Opposition To Defendant Apple, Inc.'s Motion To Dismiss Revised Consolidated Amended Complaint, respectfully request the Court take judicial notice of the document attached hereto as Exhibit 1 pursuant to Federal Rule of Evidence Rule 201. As Apple will admit, the contents of the document are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

Exhibit 1 is a true and correct copy of a label that was attached to the bottom of the box containing the iPhone purchased by Plaintiff Kliegerman, which Apple has admitted was identical to labels affixed to the boxes of the other Plaintiffs. *See* RJN at p. 8, ¶1.

Exhibit 1 is a copy of the label reproduced in the *actual size* it appeared on the iPhone box bottoms, unlike the copy of the labels that appear at RJN Exhibits A and B, which are by best estimation 70-75% larger than actual size. Accordingly, the Court should take judicial notice of Exhibit 1 and should decline to take judicial notice of Apple's Exhibits A and B on the grounds that they have been enlarged in a misleading and prejudicial manner and that, contrary to Apple's representation in its RJN, *see* RJN at pp. 8-9, ¶1, they are *not* "true and correct" copies of the iPhone box labels. *Cf. United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 974, 976 (E.D. Cal. 2004) (judicial notice denied where plaintiffs disputed authenticity and completeness of alleged synopsis of larger documents).

DATED: August 6, 2008

Respectfully Submitted,

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
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BETSY C. MANIFOLD
RACHELE R. RICKERT

/s/ Rachele R. Rickert
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SCHMIDT DECL IN SUPPORT OF PLTFS' OPPOSITION TO DEFENDANT APPLE, INC.'S MOTION TO DISMISS AND PARTIAL OPPOSITION TO APPLE'S REQUEST FOR JUDICIAL NOTICE; AND IN SUPPORT OF PLAINTIFFS' CROSS-REQUEST FOR JUDICIAL NOTICE -- MASTER FILE NO. C 07-05152-JW

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Additional Counsel for Plaintiffs

DECLARATION REGARDING CONCURRENCE

I, Rachele R. Rickert, am the ECF User whose identification and password are being used to file this DECLARATION OF ALEXANDER H. SCHMIDT IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT APPLE, INC.'S MOTION TO DISMISS; IN PARTIAL OPPOSITION TO APPLE'S REQUEST FOR JUDICIAL NOTICE; AND IN SUPPORT OF PLAINTIFFS' CROSS-REQUEST FOR JUDICIAL NOTICE. In compliance with General Order 45.X.B, I hereby attest that Alexander H. Schmidt has concurred in this filing.

DATED: August 6, 2008

WOLF HALDENSTEIN ADLER FREEMAN
& HERZ LLP

By: /s/ Rachele R. Rickert

APPLE:16248.DECL

SCHMIDT DECL IN SUPPORT OF PLTFS' OPPOSITION TO DEFENDANT APPLE, INC.'S MOTION TO DISMISS AND PARTIAL OPPOSITION TO APPLE'S REQUEST FOR JUDICIAL NOTICE; AND IN SUPPORT OF PLAINTIFFS' CROSS-REQUEST FOR JUDICIAL NOTICE -- MASTER FILE NO. C 07-05152-JW

EXHIBIT A

Includes: iPhone, Stereo Headset with mic, Dock, Dock Connector to USB 2.0 Cable, and USB Power Adapter. Supports quad-band GSM (850/900/1800/1900MHz), Wi-Fi (802.11b/g), EDGE, and Bluetooth 2.0.

Requirements: Minimum new two-year wireless service plan with AT&T required to activate all iPhone features, including iPod features¹ • Mac or PC with USB 2.0 • Mac OS X v10.4.10 or later, Windows XP Home or Professional (SP2), or Windows Vista • iTunes 7.3 or later required for activation and some features (free download from www.apple.com/itunes/download) • iTunes Store account² • Internet access³

¹Credit check required; must be 18 years or older. Service plan with AT&T required for cellular network capabilities on expiration of initial new two-year agreement. Wireless service is solely provided by and is the responsibility of AT&T. Transferring your mobile number will terminate your service with your existing provider; termination fees and other charges may apply. Wireless service and some wireless features are not available in all areas; see www.att.com for service availability. ²Free account signup through iTunes; valid credit card may be required. ³Broadband recommended; fees may apply. Use is subject to Apple and third party software licenses. Battery has limited recharge cycles and may eventually need to be replaced by Apple service provider. Battery life and charge cycles vary by use and settings. See www.apple.com/batteries. 1GB = 1 billion bytes; actual formatted capacity less. AT&T and the AT&T logo are trademarks of AT&T Knowledge Ventures and/or AT&T affiliated companies.



826-8023-A



MA712LL/A iPhone 8GB

Designed by Apple in California,
Assembled in China Model A1203

(1P) Part No. MA712LL/A

(5) Serial No. 7T725F4GWH8

(I) ICCID 89014103211480438013

1 Infinite Loop Cupertino CA USA

UPC

8 85909 12852 5

Carrier Part No. 69001

IMEI 011245001344348

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014 USA

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